



**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON
15 AUGUST 2023**

**SUBJECT: 23/00519/S37 - ELECTRICITY ACT 1989 (AS AMENDED)
SECTION 37 CONSULTATION FOR THE PROPOSED NEW
ELECTRIC LINE INSTALLED ABOVE GROUND WITH A
VOLTAGE OF 132 KV OR MORE BETWEEN ROTHES III
WIND FARM ON-SITE SUBSTATION.**

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT
AND FINANCE)**

1. REASON FOR REPORT

- 1.1 To inform the Committee of a consultation request from the Scottish Government Energy Consents Unit (SGECU) regarding a Section 37 application and accompanying submissions for consent to construct and operate a 132 kilovolt overhead line (OHL) reinforcement between Rothes III windfarm and Blackhillock Electricity Substation.
- 1.2 This report is submitted to Committee in terms of Section III (D) (1) of the Council's Scheme of Administration relating to exercising the functions of the Council as Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that the Committee:-

- (i) consider and note the contents of this report including the conclusions made regarding the planning merits of the development, as detailed in Section 3;**
- (ii) agree that, taking into account the National Planning Framework 4 (NPF4) Moray Local Development Plan 2020 (MLDP) and all relevant material considerations Moray Council raises no objection to the Section 37 application, subject to the conditions and community benefit requests set out in Appendix 2 of the report; or**
- (iii) if minded to object give planning reasons for wishing to do so; and**

(iv) Instruct the Head of Economic Growth and Development to advise the Energy Consents Unit of the decision of this Committee.

3. BACKGROUND

- 3.1 In 2022 Scottish Ministers approved a wind energy development known as 'Rothes III' windfarm which effectively extends the area of operational windfarm from Cairn Uish south. The windfarm requiring the grid connection consists of 29 turbines up to 225m in height lying west of Rothes above Archiestown. Separate to the consented windfarm a grid connection is now required from the windfarm to the national grid, and SSEN as national grid utility provider, are obliged to progress the consenting process for the necessary grid connection.
- 3.2 The transmission capacity of the proposed overhead line means that it is subject to the requirement for an application for consent under Section 37 of the 1989 Electricity Act (together with a request for a direction that planning permission be deemed to be granted under Section 57 (2) of the Town and Country Planning (Scotland) Act 1997 to be determined by Scottish Ministers. The proposal were screened against the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017) as a Schedule 2 development, and Scottish Ministers concluded that a full Environmental Impact Assessment was not required. The applicant has however submitted a detailed environmental appraisal alongside the Section 37 application.
- 3.3 The proposal involves use of 24.3km of overhead lines supported by 12-16m high double timber poles, cross-braced and 2.5m apart they are linked at the top by and supporting 'trident' shaped aluminium alloy which supports 3 cables. Depending upon topography the poles will be approximately 80-100m apart. For the first 500m from Rothes III substation and 1km from Blackhillock Substation the line will be undergrounded to minimise visual impacts at the two ends of the development.
- 3.4 The proposal requires to be considered under the terms of the 1989 Act, in particular Schedule 9 duties, which require Scottish Ministers to have regard to various environmental and cultural heritage matters when considering proposals. These duties apply whatever the relevant local policy circumstances expressed through a Development Plan may be, and therefore the approach required in this case is fundamentally different to the conventional approach for planning decisions under Section 25 of the 1997 Act. As such, the Development Plan has no primacy in determining an application for electricity consent under the 1989 Act, although development policies are still relevant to understanding the local context, the generic duties under Schedule 9 and are also material considerations in the decision-making process.
- 3.5 National Planning Framework 4 (NPF4) identifies and supports as a 'national development' transmission grid infrastructure associated with the renewable electricity generation throughout Scotland. Policy 11 Energy also specifically supports transmission and distribution infrastructure for renewable energy development. Weight is therefore attached to this whilst considering the proposal.

- 3.6 The route selected, following consultation with council officers (as can be seen on the maps in the **Appendix 1**) has been subject to significant scrutiny and the route selection has sought to minimise and avoid impacts on designation sites, residences or heritage assets. Officers having considered the Environmental Appraisal agree that the route proposed is the least onerous in terms of any environmental impact and welcome the mitigation proposed in the various chapters of the Environmental Appraisal.
- 3.7 In terms of mitigation, it is noted that the applicant has proposed replacement of the total amount of felling of woodland amounting to a maximum of 54.67 hectares (no ancient woodland requires to be felled). It is proposed to develop and gain approval of a compensatory planning scheme once the precise amount of felling required is determined. This scheme commits to provide this compensatory planting scheme within Moray.
- 3.8 There are a number of matters/queries raised by both the Transportation Manager and the Flood Risk Management Team requiring further information from the applicant. At the time of writing this report these matters had not been resolved (namely the need for an updated Transportation Assessment, and detailed drainage and flood risk assessment for temporary tracks and compounds crossing watercourses or lying with flood risk areas). It is recommended in Appendix 2, alongside other conditions recommended that the SGECU if minded to approve the transmission line, condition the provision of the above information.
- 3.9 NPF4 seeks to maximise the net economic impact, including local and community socio economic benefit such as employment and business and supply chain opportunities as required by Policy 11 c) relating to Energy and to ensure consistency with the aims of Policy 25 Community Wealth Building. The applicant refers only to encouraging any principal contractor to make use of suitable labour and resources from areas local to the location of the works. This fails to maximise the local socio economic benefit and it is therefore recommended that the developer contribute to a socio-economic benefit fund. Given the project will span 24km across Moray it is reasonable the request that it should contribute toward realising local socio economic benefits. See **Appendix 2** where proposals for this are requested alongside further conditions.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

Promote economic development and growth and maintain and promote Moray's landscape and biodiversity.

(b) Policy and Legal

The application is made for consent under S.37 of the Electricity Act 1989 to Scottish Government. If consented, planning permission is deemed to be granted for the development. For planning purposes proposals require to be determined in accordance with the development plan unless material considerations indicate otherwise. If granted by Scottish Government, the responsibility for the discharge of (planning)

conditions attached to the formal decision to grant consent will pass to the Council.

(c) Financial implications

When the Council approved the budget for 2023/24 on 1 March 2023 (paragraph 5 of the Minute refers) it balanced only by using reserves and one-off financial flexibilities. The indicative 3 year budget showed a likely requirement to continue to make savings in the order of £20 million in the next two years. All financial decisions must be made in this context and only essential additional expenditure should be agreed in the course of the year. In making this determination the committee should consider whether the financial risk to the Council of incurring additional expenditure outweighs the risk to the Council of not incurring that expenditure, as set out in the risk section below and whether a decision on funding could reasonably be deferred until the budget for future years is approved.

If the Council decides to object to the proposal, a Public Local Inquiry would be arranged by Scottish Government. The Council would be expected to attend and participate in the Inquiry process, including any pre-Inquiry arrangements with resultant costs, including officer, legal representation and consultant costs where required/appropriate. Furthermore as officers have recommended not to formally object then any case presented to a PLI may need to be by the relevant Councillors who moved against the officer recommendation. They would get support from legal but not from Development Management planning officers directly, although Strategic Planning and Development may assist. At Inquiry, the applicant may seek an award of costs against the Council if it is considered the Council has acted unreasonably.

(d) Risk Implications

If deciding to object, the outcome of any Public Local Inquiry held to consider this proposed development is uncertain: it might uphold and support the Council's decision to object, but equally the objection could be dismissed and consent granted for the development. Applicants may also seek expenses against the Council and Reporters may then consider such a claim justified and award costs if they deem the Council has acted unreasonably.

(e) Staffing Implications

In the event of a Public Local Inquiry, staff time and resources (Elected Members, planning and legal officers) will be required for preparation and attendance at any Inquiry. It is likely that external solicitors would need to be instructed due to the current staffing situation within Legal Services.

(f) Property

None.

(g) Equalities/Socio Economic Impact

None.

(h) Climate Change and Biodiversity Impacts

This proposal seeks to transmit electricity generated from a consented renewable energy development into the national grid. This proposed transmission line enabling the connection of Rothes III windfarm into the national grid therefore contributes positively to national carbon reduction targets.

(i) Consultations

Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Development Management and Building Standards Manager, the Equal Opportunities Officer, the Strategic Planning and Development Manager, and the Democratic Services Manager have been consulted, and comments received have been incorporated into the report.

5. CONCLUSION

5.1 As summarised in Section 3 above it is considered that the proposed overhead line is in an appropriate location and route. Its presence is supported by NPF4 and it does seek to avoid sensitive designations where possible. While covering a long distance across Moray the route should be discrete for much of this distance. For these reasons the recommendation in Section 2 above is recommended as appropriate.

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Background Papers:
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